

friends to gamble and that a social club did not become a common gaming house merely because it provides facilities for its members to gamble and some of them habitually use the premises for that purpose. That is I think an accurate statement of the law and applying it to the particular facts of that case there can be no doubt that no offence was committed. But it does not follow that betting between members on the premises of a club can under no circumstances be illegal. In that case the gaming was merely an incidental amusement countenanced by the club and it was properly held that the club did not by reason thereof become a common gaming house. In the present case it is not suggested that the Singapore Turf Club is a Common Betting House because certain members surreptitiously use a certain portion of the premises habitually and exclusively for betting. That club is a *bona fide* club formed and conducted for the purpose of horse racing. The facilities for betting provided are merely incidental and many members never bet at all. What is suggested is that these two members, not the club, were during those two days using that bench as a common betting house and in my opinion on the particular facts proved they were guilty of that offence. They used that bench habitually, primarily and exclusively for betting and whether that betting was done with members or outsiders or both it seems to me to come within the mischief aimed at by the Ordinance. As Stevens, J. observed the mischief which the law is designed to prevent is the encouragement of gambling by the use of premises either for public gambling or for the special purpose of a gambling saloon and substituting betting for gambling I would apply the same words to the Betting Ordinance. What it really comes to is that the two appellants displaying great astuteness set up their little betting saloon on a small corner of the club's premises and there encouraged betting by accepting commissions on credit a far more dangerous and insidious form of betting than that provided by the totalisator where the bettor must pay cash. Applying the same principles I should be prepared to hold that if on Race Days a member of the Singapore Club were to stand in the hall of the club throughout the afternoon accepting bets on the races from members he would be using the spot as a common betting house and would be punishable under this Ordinance, and similarly that if in a corner of the club another member established a roulette board where he encouraged other members throughout the day to gamble at roulette he would be using that spot as a common gaming house. The card room of a club seems to me to come under an entirely different category for reasons similar to those so clearly set out by Stevens, J. in the judgment I have just referred to.

There remains to be considered the presumption section and the exemption section. I have already

quoted the material part of the former.

It is clearly proved that writings used as a means of betting were found upon the person of the 1st appellant and this section places upon him the burden proving that the place he was using was not a common betting house within the meaning of the law. He adduced no evidence to discharge that burden and his counsel had to rely solely upon admissions as he could extract from the prosecution witnesses and argument based thereon. From what I have already said it follows that in my view the fact that the appellants were betting with members in the club enclosure is not sufficient to rebut the presumption.

I derive support for the view which I have taken from section 15 of the Ordinance which provides that:—

"The Governor in Council may by notification in the Gazette either generally or in particular cases exempt from the provisions of this Ordinance the members and officers of any racing club in respect of any totalisator or *pari-mutuel* promoted by it for its members."

The Singapore Turf Club is so exempted.

This was a new section added to the Ordinance in 1913 after the subsection allowing bookmaking on race courses had been repealed and it would appear that the intention of the Legislature was that thenceforward the only organized betting—even among members—should be such totalisator or *pari mutuel* as should be exempted under the section. It would seem to follow that any other organized betting system such as bookmaking is illegal. If betting however systematised or habitual is legal if it is only between members this section is superfluous because the totalisator is merely a system of betting among members. I cannot believe that is so.

I am accordingly of the opinion that the appellants were properly convicted and I would dismiss the appeals.

*Appeal allowed.
Convictions quashed.*

(Appellate Civil Jurisdiction)

Murison, C.J., Burton & Whitley, JJ.

March 20, 1933.

IN THE MATTER OF THE PETITION OF THE
STRAITS STEAMSHIP COMPANY LIMITED

Vs.

THE ATTORNEY-GENERAL

(Penang Crown Suit No. 1 of 1932)

Petition of Right—Ordinance No. 125 (Merchant Shipping)—Neglect by shipowner of statutory duty—exemption by Colonial Government in breach of Ordinance—Illegality of exercise of dispensing power.

S. 14 of Ordinance 125 (Merchant Shipping) requires vessels

to be properly provided with officers duly certificated. In 1927 the Government of the Colony purported to exempt from the provisions of this section six small motor vessels plying between Burmese ports and Penang; and they also instructed the Port Officer not to prosecute the offending owners or masters of those vessels. The Petitioners were a Steamship Company owning vessels which traded between Penang and Burmese ports and which were manned in accordance with S. 14 of Ordinance 125. They alleged that the six motor vessels by reason of such exemption were run at a very low cost and competed unfairly with their own ships and that they had thereby suffered damage. They further claimed that in purporting to exempt the six small vessels from compliance with S. 14 of Ordinance 125 the Government were illegally exercising a dispensing power contrary to the Bill of Rights.

Held, that in granting exemption to the six small motor vessels the Government committed a breach of their statutory duty but the statute namely Ordinance 125 (Merchant Shipping) was aimed at the regulation of Merchant Shipping and not at the protection of individuals from damage in their trade and therefore that the damage arising from the breach of the statutory duty was not of a kind which the statute was intended to prevent.

Held also, that the purported exemption of the six small motor vessels was illegal under the Bill of Rights the Crown having no such dispensing power but that the Bill of Rights is generic whereas Ordinance 125 is specific and in this case there being no remedy for breach of the specific statute it was not open to a person injured to claim a remedy under the wider prohibition.

APPEAL from Judgment of Prichard, J. dismissing Petition of Right of the Appellants the Straits Steamship Co., Ltd. against the Attorney-General of the Colony claiming damages for tort. The Appeal came on for hearing before the Court of Appeal in Penang (Murison C.J. Burton J. and Whitley J.) on the 17th March 1933. The facts and arguments adduced sufficiently appear from the Judgments of the Court of Appeal.

Simpson (Hume with him) for Appellants.

Bassett, (D.P.P.) for Respondent.

Murison, C.J.—This is an appeal against the judgment of Prichard, J. dismissing the Petition of Right of the Appellants, the Straits Steamship Company, against the Attorney-General of the Colony claiming \$146,392.59 as damages for tort.

The Appellants trade (*inter alia*) between the Port of Penang in the Colony and the Ports of Tavoy and Mergui in Burma. At all material times their vessels were manned with the proper complement of officers duly certificated in accordance with Section 14 of Ordinance No. 125 (Merchant Shipping).

For a period of about five years from June, 1927 to June, 1932 certain owners of motor-vessels registered in Burma have traded between various Ports in Burma and Penang. These vessels are within Section 4 of the Ordinance—vessels driven by mechanical power—and their gross tonnage varies from 121.94 tons to 287.51 tons.

In November, 1927 the Government of the Colony by letter addressed to the Secretary of the Indian Government purported to exempt the said six motor

vessels from compliance with Section 14 of the Ordinance. They also instructed the Port Officer Penang not to exercise his discretion to prosecute the owners of the six vessels under Section 17 of the Ordinance, which provides a penalty for non-compliance with Section 14.

There is not contained in the Ordinance or in any law of the Colony any power for the Governor or anyone else to exempt any owner of a ship from compliance with the provisions of Section 14.

As a result of the exemption the owner of these six vessels traded frequently between the port of Penang and the Burmese ports of Tavoy and Mergui with a complement of men not possessed of the qualifications required by Section 14 of the Ordinance. By virtue of the exemption the overhead costs of these vessels were lower than those of the Appellants, and they were enabled to carry cargo at a lower rate than that of the Appellants' vessels. The Appellants, therefore, had to reduce their rates and so suffered damage by loss of revenue. The only competitors of the Appellants in runs between the ports mentioned were these six motor vessels.

The Appellants claim that the exemption of the six vessels was illegal. They claim \$154,392.59 damages, particulars of which are set forth in the petition.

The petition is dated 15th June, 1932 and the fiat of His Excellency the Governor was impressed on it on the same day.

Upon the 10th September, 1932, the Attorney-General served notice of motion which (as amended at the hearing) called on the Appellants to show cause why the action should not be dismissed as being bad in substance and law, and disclosing no cause of action against the Crown. The procedure seems unusual. It is based upon Order XXV Rules 1 to 4 of the Rules of the Supreme Court in England which have been held not suitable to cases of this kind. [*Dyson v. Attorney-General* (1911), 1 K.B. 410 and *Evans v. Barclay's Bank*, (1924) W. N. 97]. The procedure, however, has not been seriously objected to, and Luxmoore, J. in *Boardman v. Grand Trunk Railway* (1933) 49 Times Law Reports 218 at page 219 decided a case jurisdiction under it. In these circumstances, and considering that costs are saved and that the appellants are not in my opinion prejudiced by it, I think the point is not of material importance.

Upon the 1st November, 1932, the trial judge dismissed the petition.

Upon the 13th January, 1933 the Appellants filed their memorandum of appeal against this judgment.

The main points of appeal are that the judge was wrong in holding that the petition disclosed no cause of action; that Section 14 of the Ordinance ought to have been construed as conferring right to equal treatment of

all vessels subject to the Ordinance; that the Crown, in preventing the Harbour Master from prosecuting the owners of the six vessels, had deprived the Appellants of a statutory right: and that in exempting the six vessels from Section 14 the Crown had committed a wrongful act and caused damage to the Appellants.

It is conceded that the Crown in this Colony is liable for tort [*Attorney-General v. Wemyss*, (1888) 13 A.C. 192].

It is important to observe that the Appellants' claim is based upon two distinct grounds. These were developed in the argument before us more clearly than they are stated in the Memorandum of Appeal.

The first ground is that the Government instigated or permitted the owners of the six vessels to commit a breach of the Ordinance and prevented the Harbour Master from exercising his discretion to prosecute the owners.

The second ground is that in purporting to exempt the owners of the six vessels from compliance with Section 14 of the Ordinance the Government exercised a dispensing power which is declared to be illegal by the Bill of Rights, 1688. This ground may almost be said to be a new point, but no objection was made to it and it should, I think, in any event be allowed.

I deal now with the first two grounds.

The position here, according to the Appellants is that the Respondents, The Government, by their conduct have committed a breach of their statutory duty to abide by the provisions of Section 14 of Ordinance No. 125 (Merchant Shipping); and that in consequence the Appellants have suffered damage because the exemption in favour of the owners of the six vessels enabled the latter through the reduction of overhead charges to trade, as regards cargo, upon lower terms than the Appellants.

The law primarily applicable to this position is laid down by Pollock, C.B. in *Chamberlain v. Chester & Co.*, (1848) 1 Exch. 870 at page 876 as follows:

"Where a statute prohibits the doing of a particular act affecting the public, no person has a right of action against another merely because he has done the prohibited act. It is incumbent on the party complaining to allege and prove that the doing of the act prohibited has caused him some special damage, some peculiar injury beyond that which he may be supposed to sustain in common with rest of the Queen's subjects, by an infringement of the law."

That the Appellants have suffered special damage is fairly clear, and anyhow is to be so presumed for the purpose of this appeal.

But the mere existence of special damage arising to an individual from the breach of a statute does not en-

title him to sue unless two conditions are fulfilled. The first of these is that the Plaintiff is one of the class of persons whom the statute intended to protect; and so far as this goes there seems to be no difficulty. The second is that the harm arising from the breach must be of a kind the statute intended to prevent. *Ward v. Hobbs*, (1878) 4 A.C. 13 and *Gorris v. Scott*, (1874) 9 Exch. 125 were referred to; and to them may be added *Sharp v. Powell*, [(1872) 7 C.P. 253]. And here there is much difficulty.

For the purpose of ascertaining the intention of the Legislature in enacting section 14 of the Ordinance, the learned trial judge has examined the history of the section of the Ordinance. The source from which this section 14 originally came is Section 30 of the Mercantile Marine Act, 1850. The preamble of this Act is:

"Whereas it is expedient to make provision for improving the conditions of masters, mates and seamen, and for maintaining discipline in the British Mercantile Service, Be it enacted" etc.

The provisions of Section 30 of this Act were incorporated as Section 136 of the Merchant Shipping Act 1854, and as section 13 of the Indian Act No. 1 of 1859, and as Section 15 of our local Ordinance No. 32 of 1910, and eventually as Section 14 of our present Ordinance No. 125 (Merchant Shipping).

The learned trial judge therefore held that the object of the Ordinance, and therefore the object of Section 14, was only to improve the professional status of certificated officers. It was not intended, he said, to prevent dangers to navigation nor to prevent loss of trade to individual traders. Upon the authority of *Gorris v. Scott*, therefore, he acceded to the motion and dismissed the petition.

It is to be observed, however, that the preamble or long title (as the case may be) of all of these enactments after the Act of 1850 underwent a change. That of the Acts of 1854 and 1894 and of our Ordinance No. 125 is:—

"To consolidate and amend the law relating to (with respect to) Merchant Shipping".

It is argued, therefore, that the construction of our Ordinance No. 125 is not to be confined, so far as Section 14 is concerned, to the limited scope indicated by the preamble of the Mercantile Marine Act of 1850 from which it was taken. This argument in my opinion would be good if it can be shown from our own Ordinance No. 125 or from the Imperial Merchant Shipping Acts that the scope of the Ordinance or of the Acts has been extended to include, as one of their objects, the preservation of individual trading rights.

With regard to our own Ordinance there are 13

Parts. Part I is introductory. Part II deals with Masters and Seamen. Part III deals with Passenger Ships, and Part IV with Pilgrim Ships. Part V is headed "Safety" and deals with prevention of collisions, reports of accidents, life-saving appliances, Load-line, carriage of cattle and deck cargo, etc. Part VI treats of Shipping Enquiries and Courts. Part VII deals with the Delivery of Goods. Part VIII deals with the Liability of Shipowners, Part IX with wreck and salvage, Part X with Pilotage, Part XI with Ports and Port Officers, and Part XII with Legal Proceedings. Part XIII is supplemental.

I will not go through the contents of the Imperial Merchant Shipping Acts, for their contents are similar to, though more extensive than, those of our own Ordinance.

The result is that I can find nothing in the Ordinance or the Acts from which it can be properly inferred that the Legislature in either case ever intended to provide for any harm which might arise from damage to individual trading rights.

But then it is argued that from the provisions of Section 14 itself such an inference can be drawn because the section operates not only upon British ships but also upon foreign-going ships which may be in our waters; and it cannot be said (it is argued) that our Legislature has any interest in the preservation of the professional status or discipline of foreign ships' officers. This is true so far as it goes, but it does not show what is required, namely that the Legislature intended to protect the trade rights of individual traders. It only shows that the Legislature intended to secure that foreign ships in our waters have to be (as British ships have to be) manned by competent officers. An intention to provide for the safety of navigation might be inferred from such a provision, but not an intention to preserve trading rights.

The position really is this; that in granting the exemption the Government committed a breach of a statutory duty, but the statute was aimed at the regulation of Merchant Shipping, not at the protection of individuals from damage in their cargo trade.

I wish to refer to the case of *Couch v. Steel*, (1854) 3 E. & B. 402. There Lord Campbell, L.C. held that where a new duty is created by statute and (as here, Section 17) a penalty is imposed for its breach, and that penalty does not go to the person injured (as it does not under our law), then the intention is that he is to have a right of action. Had this case been good law to-day the Appellants would, I think, have succeeded. But it is clear that *Couch v. Steel* is no longer law. (*Municipality of Picton v. Geldert*, [(1893) A.C. 425] and *Saunders v. Holborn District Board*, (1895) 1 Q.B. 64).

I, therefore, come to the conclusion that the second

of the two conditions which I mentioned above, namely, the condition that the damage arising from the breach must be of a kind which the statute intended to prevent, is not complied with.

I think, therefore, that upon the first of the two grounds of appeal to which I have referred the trial judge was right and the Appellants' case fails.

I come now to the second ground upon which the Appellants' claim is based. They say that the Government granted a dispensation which is forbidden by the Bill of Rights, 1688.

Now by section 1 of the Bill of Rights (1 William and Mary, Sess. II cap. 2) it is clearly enacted that the Crown may not suspend laws or the execution of laws without the consent of Parliament, and may not dispense with laws or the execution of laws. It is true that the latter section extends only to the dispensing power "as it hath been assumed and exercised of late" but Session 2 rendered invalid all subsequent dispensations with Statutes unless specially allowed by the Statutes. Mr. Simpson, for the Appellants, says he can cite no cases on the Statute because the Government of this Colony is the only Government which has committed a breach of the Statute since it was passed. It seems, however, clear that there has been an illegal use of the dispensing power; for, as I have said, neither Section 14 or any other section of our Ordinance nor any provision of law gives a power of exemption.

The difficulty with which the Appellants now have to contend is to show that even if there has been a breach of the Bill of Rights, they are in any better position than they were before.

The argument for the Appellants is this. You, the Respondents, (they say) have acted contrary to the Bill of Rights in dispensing with a statute, that is the local Ordinance. As a consequence we have suffered damage. We are not concerned with the peculiar operation of the Ordinance which, whilst intending one effect, incidentally produced another which damaged us. We say that if there had been no breach of the Bill of Rights we should have suffered no damage. It is not fair to shut us out on this short-circuit motion. We should be heard on the question of damage.

The Respondents say that the breach of the Bill of Rights does not place the Appellants in any better position. They argue thus:

The Bill of Rights in effect says nothing more than is the fact already. It says that dispensing is illegal. The exemption in this case, not being allowed by the local Ordinance, is already *per se* illegal. Nor does the Bill of Rights create a wrong of a different nature from, or with any different remedy than, the wrong already existing under the breach of the Ordinance, for directly we begin to examine the nature of the wrong-

ful act we come back again to the exemption which was granted, and to the Ordinance under which it purported to issue. We arrive, in fact, at the position which has already been considered under the first of the two grounds on which the Appellants' case is founded. If the view taken of the first ground is right, the second ground must also fail.

In my opinion the latter of these two arguments is correct. The Bill of Rights is generic. It says in effect that if the Crown dispenses with any statute, that is illegal. When dispensation has taken place the specific case immediately presents itself and becomes the real subject of contention. If upon examination it appears that there is no remedy for a breach of the specific statute it is not open to the injured person to claim a remedy under the wider prohibition.

I might perhaps refer to the case of *Regers v. Renjendro Duty*, (1860) 13 Moo. P.C.C. 209, which, though by no means on all fours with this case, has some points of relevance to it.

For these reasons I am of opinion that the second ground of the Appellants' case also fails.

I would dismiss, with costs, the appeal from the judgment (though, I think, it would more properly be called the order) of the Court below.

Burton, J.—The case as put by the Crown depended on the principle laid down in *Gorris v. Scott*, L.R. 9 Ex. 125 and other cases, that there is no cause of action when the damage complained of is something totally apart from the object of the Act of Parliament, as being evidently outside the mischiefs which it is intended to prevent; that what the Legislature has declared to be wrongful for a definite purpose cannot be therefore treated as wrongful for another and different purpose.

The source of section 14 of Ordinance 125 (Merchant Shipping) is section 30 of the Mercantile Marine Act of 1850, the preamble of which states that it "is expedient to make provision for improving the condition of masters, mates, and seamen, and for maintaining discipline in the British Merchant Service" It was argued that section 14 must therefore have been enacted for the same limited purpose. This argument is based on the words of Turner, L.J. in *Cope v. Doberly*, 2 De G. and J. 621 who said referring to the Merchant Shipping Act of 1854:—

"The Act is divided into several parts, each of which relates to a distinct and independent branch of merchant shipping law. The Act indeed may well be considered as embodying several distinct acts in one Act; and one part of the Act therefore throws no further light upon the other parts of it than would be cast upon them by the existence of other separate and distinct enactments to the same effect"

But an application of this principle to Part II of the Merchant Shipping Ordinance does not in my opinion make it possible to restrict the objects of that part to the objects stated in the preamble to the Mercantile Marine Act of 1850. The Certificates are intended to ensure the competency of the officers, and there is provision for examination and for colour and vision tests and it seems to me that the paramount purpose running through this part, as through most of the rest of the Ordinance is the safety of ships, though there may also be regard for the condition of the crews.

If however the principle of *Gorris v. Scott* (*ubi sup.*) is to apply to this claim the appellants cannot succeed unless they can show in the Ordinance a purpose to prevent unfair competition arising from neglect of its provisions; and I do not think that such a purpose can be inferred; for even when the provisions, as in section 14 itself, are made to apply to foreign ships, it is clear that the object of those provisions is safety and not the prevention of unfair competition. Indeed I can find no indication in the whole of the Ordinance of any intention to prevent unfair competition.

But the appellants now put their case on another ground which was not raised in the Court below. They say that by exempting the motor-vessels the Government of the Colony has committed a definite illegal act, in other words the Government has in effect without authority enacted a power of exemption similar to that contained in sections 15 and 16 and exercised it in favour of the Burmese motor-vessels. There is here a definite assumption of dispensing power by the executive authority, and this is the tort complained of, the definite illegal act of exemption, not a mere failure to obey a statute.

This is stigmatised as a breach of the Bill of Rights, and it is argued that the considered abrogation of a statute by the Supreme Executive authority of the Colony by which it discriminated between competing companies and conferred an unfair benefit on one which resulted in damage to the trade of the other, brings in its train consequences which are not circumscribed by the principle in *Gorris v. Scott*. The Bill of Rights sets in the forefront of the grievances against King James the Second his "endeavour to subvert and extirpate... the Lawes and liberties of this Kingdome."

By assuming and exercising of dispensing with and suspending of lawes and the execution of lawes without consent of Parliament" and the second declaration of the Parliament is,

"That the pretended power of dispensing with laws or the execution of laws by regall authorities as it hath been assumed and exercised of late is illegal."

This is a definite declaration of the illegality of the dispensing power. There is no authority on the

point and it is not easy to see what difference this declaration makes. The neglect to obey a provision of law is an illegality just as much as the refusal to enforce a statute; but though the latter may be more morally reprehensible than the former it cannot become more than an illegal act nor entail any different consequences. The Government were under a duty to enforce the law contained in section 14, and they wilfully permitted a breach of it. They were under a duty to protect the Straits Steamship Company's ships from the dangers of incompetent navigation, and no doubt if one of the Straits Steamship Company's ships had been sunk by one of the motor-vessels as the result of undermanning the Government would have been liable. But the Government are not by this Statute under a duty to protect the Company from competition, fair or unfair, and consequently, I think, by dispensing with this Statute, the Government have not opened themselves to attack on the ground that the Straits Steamship Company have suffered from unfair competition.

I think therefore that the principle of *Gorris v. Scott* applies to this case and that the Government is not answerable for damage which arose from unfair competition.

It is, I suppose, possible that the motor-vessels would have been able to undercut the Company's ships even if fully staffed, but I think we are precluded from considering this now, as the petition assumes that the damage was the direct consequence of the undermanning.

I am of opinion therefore that this appeal should be dismissed with costs.

Whitley, J.—The facts in this case are fully set out in the judgment of the learned trial judge and I do not propose to recapitulate them.

The Motion being under section 22 (2) of the Crown Suits Ordinance it has to be assumed that all the facts alleged in the petition are true and it is for the Crown to satisfy the Court that even admitting all those facts the petition discloses no case which would entitle the petitioners to any judgment decree or order against the Crown. In the Court below the Crown succeeded on the ground that the damage complained of is something totally apart from the object of the Merchant Shipping Ordinance and evidently outside the mischiefs which it was intended to prevent. Before us Mr. Simpson for the Petitioners-Appellants, whilst still contending that the trial judge was wrong in so holding, based his case largely upon a new ground which was not argued in the Court below namely that the Crown by exempting the junk owners from the provisions of section 14 of the Merchant Shipping Ordinance and by instructing the Harbour Master Penang not to sanction their prosecution exercised the

power of dispensing with Statutes which is declared to be illegal by the *Bill of Rights, I William and Mary Session II Cap. 2*.

The material parts of the Bill of Rights read as follows:—

"Whereas the late King James the Second..... did endeavour to subvert and extirpate..... the laws and liberties of this Kingdom by assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without the consent of Parliament.....

All which are utterly and directly contrary to the known Laws and Statutes and Freedom of this Realm.

The said Lords Spiritual and Temporal and Commons..... do for the vindicating and asserting their antient Rights and Liberties declare:

1. That the pretended Power of suspending of laws or the execution of the laws by legal authority without consent of Parliaments is illegal.

2. That the pretended Power of dispensing with laws or the Execution of Laws by regal Authority as it hath been assumed and exercised of late is illegal XII "And it be further declared and enacted by the Authority aforesaid. That from and after this present Session of Parliament, no Dispensation by *Non obstante* of or to any Statute, or of any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a Dispensation be allowed of in such Statute"

Now many sections of the Merchant Shipping Ordinance contain a subsection giving power to exempt. For example sub-section (2) of section 16 (which deals with certificated officers in Tugs) reads:—

"The Governor in Council may by notification in the Gazette and subject to such conditions as he thinks fit, exempt any ship or class of ship from any of the provisions of this section".

There is no such subsection in section 14 so that the exemption of the junk owners from the requirements of that section was clearly an illegal dispensation such as those described in the Bill of Rights. The Bill did not enact new law; it was merely declaratory of the existing law which had been disregarded. The framers of the Bill are careful to use the words "assuming a power" "pretended power" in order to emphasize the fact that such dispensing and suspending had always been contrary to law.

But it is contended on behalf of the petitioners that the effect of the Bill is to confer upon any person who has suffered damage by such dispensing with a Statute a special right to sue for damages—a right wider than the ordinary right and not subject to the restrictions and limitations which the law imposes in the ordinary case of a person alleging wrongful injury as a result of the omission or failure to perform a duty specifically imposed by Statute. No authority was quoted for this proposition and the explanation given for lack of authority was that no other Government since the Stuarts has attempted to exercise such a dispensing power. In the absence of such authority I find myself unable to assent to this proposition.

It seems to me that the effect of the law as declared in the Bill of Rights is no more than to deprive any person who disregards the requirements of a Statute of the defence that he has been granted exemption by the Crown and similarly to deprive the Crown (where liable in tort) if sued for damages suffered through the Crown permitting or encouraging a breach of Statute, of the defence that such exemption was granted in pursuance of the dispensing power. If the dispensing power were legal as for example under section 16 (2) of the Merchant Shipping Ordinance the person exempted would not be liable in tort for any damage caused by his failure to comply with the Statute but when as in the present case the dispensing is illegal the person who under shelter of the exemption illegally granted has disobeyed that requirement of the Statute cannot plead the exemption as his excuse. The exemption is null and void and of no effect, his liability is precisely the same as it would have been if he had not been exempted and he remains subject to the ordinary law governing liability in damages for tort. The Crown purporting to dispense with the Statute in his favour has also been guilty of an illegal act and since the Crown can be sued in tort in this Colony—(*Attorney-General, Straits Settlements v. Wemyss*, 13 A.C. 192) the Crown will also be liable for damages in tort in a proper case, i.e. if it can be shown that applying the ordinary rules of law as to liability the injured party is entitled to such damages. I am accordingly of the opinion that the Bill of Rights confers no special rights or remedies and imposes no special liabilities. It merely enacts or perhaps to be more accurate, declares that the Crown cannot put itself above the law nor excuse any of its subjects from observance of the law.

If my view of that part of the case is correct it only remains now to consider whether apart altogether from the Bill of Rights the Petitioners have a good cause of action. It is admitted that there has been a breach by the junk owners of section 14 and that breach was permitted or encouraged by the Crown. For the purposes of the case at present under consideration I think it may also be assumed that the Crown by reason of such permitting or encouraging would be equally liable in tort with the junk owners for any damages, which the petitioners might be entitled to recover from the Crown.

The breach of a statutory duty created for the benefit of an individual or a class is a tortious act entitling anyone who suffers special damage therefrom to recover such damages against the tort-feasor [*Dawson v. Bingley Urban District Council*, (1911) 2 K.B. *per* Farwell, L.J. at p. 156]. So in every case where a Statute enacts or prohibits a thing for the benefit of a person he shall have a remedy upon the

same Statute for the thing enacted for his advantage or for the recompense of a wrong done to him contrary to law (Comyn's Digest 5th Edn: p.422). Where the statute is silent as to the remedy the Legislature is to be taken as intending the ordinary result; and the proper remedy for the breach of the statute is an action for damages and in a proper case for an injunction. [*per* Kennedy, L.J. at p. 159 *Dawson v. Bingley Urban District Council* (*ubi supra*)] It is a condition precedent that the statute must have enacted or prohibited the thing "for the benefit of a person or class" and the benefit must be directly for the benefit of the person or class not incidentally merely as the outcome of public policy (Beven on Negligence 4th Edn. 394).

Accordingly the mere fact that the breach of a public statutory duty has caused damage does not vest a right of action in the person suffering the damage against the person guilty of the breach; whether the breach does or does not give such right of action must depend upon the object and language of the particular statute. [*Atkinson v. Newcastle & Gateshead Waterworks*, L.R. (1877) 2 Ex. D. 441]. That statement of the law brings us to the principle upon which the present case was decided and I think rightly decided in favour of the Crown by the learned trial judge. The leading case relied upon is *Gorris v. Scott*, L.R. (1874) 9 Ex. There are two short passages in the judgments in that case which state the law so clearly that I cannot do better than quote them *in extenso*. Kelly, C. B. at p. 128 observes: "The argument of the defendant is, that the Act has imposed penalties to secure the observance of its provisions, and that, according to the general rule, the remedy prescribed by the statute must be pursued; that although when penalties are imposed for the violation of a statutory duty, a person aggrieved by its violation may sometimes maintain an action for the damage so caused, that must be in case where the object of the statute is to confer a benefit on individuals and to protect them against the evil consequences which the Statute was designed to prevent, and which have in fact ensued; but that if the object is not to protect individuals against the consequences which have in fact ensued, it is otherwise; that if, therefore, by reason of the precautions in question not having been taken, the plaintiffs had sustained that damage against which it was intended to secure them, an action would lie, but that when the damage is of such a nature as was not contemplated at all by the statute, and as to which it was not intended to confer any benefit on the Plaintiffs, they cannot maintain an action founded on the neglect."

Piggott, B. at p. 130 concludes with these words:—

"As the case stands on this declaration, the answer to the action is this; Admit there has been a breach of duty, admit there has been a consequent injury; still the Legislature was not legislating to protect against such an injury, but for an altogether different purpose; its object was not to regulate the duty of the carriers for all purposes, but only for one particular purpose"

These words could be applied most aptly to the present case. It is clear I think that the object of the Merchant Shipping Ordinance was not to prevent unfair competition in freights. Mr. Simpson delved exhaustively into the history of the Ordinance and equally exhaustively analysed the various chapters and sections but with all his thoroughness and skill he was unable to point to anything definitely and specifically indicating such an object. The most he could do was to argue that some of the obligations imposed upon foreign ships, obviously devised to ensure safety of navigation, would incidentally operate so as to tend to prevent these ships competing unfairly with British ships. But if that had been the intention of the Legislature there are many other much more obvious and effective ways in which such object could have been attained, e.g. by regulating freights, wages, etc. The learned trial judge took I think too narrow a view when he held that the sole object of the ordinance was to improve the conditions and status of officers, etc. He was no doubt misled by the preamble to the Mercantile Marine Act of 1850. He was however right in holding that the prevention of unfair competition was something totally apart from the object of the Act and evidently outside the mischiefs which it was intended to prevent.

The position might be different if the petitioners had suffered damage from a collision caused by the inefficient navigation of one of the exempted junks by its uncertificated master for in such case they could urge that it is clearly one object of the Ordinance to provide for safety in navigation. But even in such a case they would be faced with difficulties if they based their claim upon breach of this ordinance. Section 17 provides for penalties to be inflicted for failure to comply with the requirements of section 14 and it is a principle of law that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy, of any other form of remedy than that given by the statute. *Per* Lord Halsbury in *Pasmore v. Oswaldtwistle Urban Council*, (1898) A. C. at page 394.

In *Doe v. Bridges*, (1831) 1 B. & A. 845 Lord Tenderden at p. 859 states the principle thus: "Where an Act creates an obligation and enforce the perfor-

mance in a specified manner we take it to be a general rule that performance cannot be enforced in any other manner. If an obligation is created but no mode of enforcing its performance is ordained, the Common Law may in general find a mode suited to the particular nature of the case" and whether the general rule is to prevail or an exception to the general rule is to be admitted must depend on the scope and language of the Act which creates the obligation and on considerations of policy and convenience (*Per* Lord Macnaghten in *Pasmore v. Oswaldtwistle Urban Council*, *ubi supra*).

Section 14 creates an obligation and section 17 provided a remedy for its non-observance. Do the scope and language of the ordinance indicate that the general rule should prevail so that this remedy is the only remedy or do they indicate that an exception to the general rule should be admitted? I am inclined to the view that they indicate that the ordinary rule should prevail for by section 461 it is provided that:—

"Where any Court imposes a fine under this Ordinance for which no specific application is provided that Court may if it thinks fit direct the whole or any part of the fine to be applied in compensating any person for any wrong or damage which he has sustained by the act or default in respect of which the fine is imposed"

That section seems to make the intention of the Legislature sufficiently clear and to answer the questions put by Lord Macnaghten in the judgment of the Privy Council in *Jobnstons v. Consumers Gas Co. of Toronto*, (1898) A.C. which turned upon the same point. At page 455 he used these words:—

"What then was the intention of the Legislature? What security was provided to insure observance of the statutory requirements? The answer is to be found in section 9."

It was held that section 9 of the Act under consideration in that case provided the only remedy and that individuals had no right of action for non-compliance with the Act.

In the present case the answer is to be found in sections 17 and 461; it seems clear that the intention is that the remedy should be imposition of a fine and in a proper case application of that fine as compensation to the aggrieved party. As against the Crown if it refuses sanction to prosecute it has already been held by this Court that the remedy is by mandamus.

It may be argued that such remedy is wholly inadequate to meet a case such as that put forward by the petitioners. I do not think that it is for this Court to consider the question of adequacy except perhaps in so far as it might have a bearing when trying to

determine the intention of the Legislature. But it seems to me that the petitioners have only themselves to blame for the heavy nature of their claim or damages. Their remedy was available to them the first day upon which one of these junks entered the waters of the Colony without complying with the requirements of section 14. If the Government had then refused sanction to prosecute the petitioners could have obtained their mandamus at once and upon conviction and fine they could have applied under section 461 to have the fine applied in compensating them for any damages which they had sustained. If they had done that their remedy would have been ample to meet the case. Furthermore the junks would have been liable to a further fine of \$500/- every time any one of them repeated the offence. Instead of doing that the petitioners waited for nearly five years before taking action. I appreciate that upon this Motion this Court is not called upon or entitled to assess damages or to consider any question of remoteness of damage. I merely draw attention to this feature of the case in order to support the opinion of which I have formed that there is nothing inherently inadequate in the remedy provided by the Ordinance.

It was objected that the procedure adopted by the Attorney General in applying by Motion under section 22 (2) of the Crown Suits Ordinance was wrong and that recourse should only be had to that sub-section in very clear cases. That and the following sub-section read as follows:—

"(2) The Attorney-General may not demur but if it appears to him that the petition discloses no case, admitting as true the facts alleged in it which would entitle the petitioners to any judgment decree or order against the Crown he may apply by Motion to the Court, on giving twenty-four hours' notice in the form in Schedule W. for a rule to be served on the Petitioner to show cause why the Petition should not be dismissed.

"(3) If the rule is granted and it appears to the Court upon the hearing that no judgment decree or order can be given on the petition as it stands the Court may direct the petition be dismissed or to be amended on such terms as to costs or otherwise as to the Court seem right."

I entertain no doubt that this is a proper case for such an application. The Attorney General for the purposes of the Motion was prepared to admit the truth of the facts alleged and it appeared to him that they disclosed no case which would entitle the petitioners to judgment. That being so, he was entitled to apply under the sub-section and if the view which I have taken as to the law is correct the result will have been the saving of expense which is no doubt the object of the sub-section.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors for the Appellants—*Adams and Allan.*

(Appellate Criminal Jurisdiction)

Murison, C.J., Burton & Whitley, JJ.

April 19, 1933.

REX v. SANTOKH SINGH

(Singapore Special Case No. 1 of 1933)

Criminal Procedure Code, S. 123—Admission of Confession of accused—Admission of dying declaration of deceased—Reservation by trial Judge at Assizes of points of law for Full Court.

The accused when taken before a magistrate was asked "Do you want to make a statement yourself?" He answered "No, I will answer any questions". Thereafter the magistrate took a statement from him.

Held, that the character of the statement as a voluntary statement was not lost because it was made in the process of question and answer.

Held also, that in taking a confession questions may be asked by the Confessor so long as there is no pressure threat or inducement.

Held further, that questions asked by way of cross-examination are inadmissible.

On the first two points *Rex v. Lim Ah Seng* 1931 S.S.L.R. 178 not followed. On the third point *Rex v. Lim Ah Seng* followed.

The ruling in *Rex v. Lim Ah Seng* that "a statement or confession is not made voluntarily unless it is volunteered" disapproved of, following *Barindra Kumar Ghose v. Emperor*, 1909—37 Calcutta at p. 514 and *The King v. Best*, (1909) 1 K.B. 692.

SPECIAL CASE stated by Mills, J. under S. 312 of the Criminal Procedure Code.

The facts are set out in the Judgment of Murison, C. J.

P. A. McElwaine, K.C. (D.P.P.) for the Crown.

Coltart for the Accused.

Cur. Adv. Vult.

Murison, C.J.—The accused in this case, one Santokh Singh *alias* Makhan Singh, was convicted of the murder of one Jaimal Singh at Ek Ho Rubber Factory, Paya Lebar, on the 15th December, 1932.

Part of the evidence against the accused consisted of a statement made by the accused to Mr. A. W. Hay, a Police Magistrate. In this statement the accused clearly admitted that he killed Jaimal Singh. This is Exhibit G in the Record. It was made under Section 123 of The Criminal Procedure Code.

Part of the evidence against the accused consisted also of a statement made by Jaimal Singh to Mr. J. Gregg, a Police Magistrate, in regard to the circumstances of the transaction which resulted in his death. In this statement Jaimal Singh indicated that the accused had stabbed him. This is Exhibit F in the Record.

Objections during the trial were taken to the admission of both these statements. The trial judge overruled the objections and admitted the evidence.